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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,757	09/17/2001	Katsuhiko Kumakura	10059-397US (P22089-03)	8993

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2005 MARKET STREET, SUITE 2200  
PHILADELPHIA, PA 19103-7013

EXAMINER

PICKETT, JOHN G

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

*Revised*

<b>Offic Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/936,757	KUMAKURA ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Gregory Pickett	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 11 March 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1,2,4-7 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4-7,14,16 and 17 is/are rejected.
- 7) Claim(s) 15 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on 11 March 2003 is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

1. This Office action acknowledges the applicant's amendment presented as Paper No. 8. Claims 1, 2, 4-7, and 14-17 are pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Drawings*

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on March 11, 2003 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

The Patent and Trademark Office no longer makes drawing changes. See 1017 O.G. 4. It is applicant's responsibility to ensure that the drawings are corrected. Corrections must be made in accordance with the instructions below.

## INFORMATION ON HOW TO EFFECT DRAWING CHANGES

### 1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be

obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.185(a). Failure to take corrective action within the set (or extended) period will result in **ABANDONMENT** of the application.

***Specification***

4. In light of the applicant's amendment, the objection to the specification is hereby withdrawn.

***Claim Rejections - 35 USC § 112***

5. In light of the applicant's amendment, the rejection of claims 2 and 14-16 under 35 U.S.C. 112, second paragraph, are hereby withdrawn.

***Claim Rejections - 35 USC § 103***

6. Claims 1, 2, 4, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitz Gerald (US 1,272,411) in view of Novak (US 2,299,027) and Worley (US 4,971,197).

Regarding claims 1, 2, and 16, Fitz Gerald discloses a tubular case (2, 3, 4, 5); an opening (as shown, Figure 1); a lid (6, 7); a bottom (10); and an inclined extracting outlet (opening formed by the bending of flaps 14 and 15). The case of Fitz Gerald is capable of functioning as claimed by the applicant and meets all limitations claimed by the applicant except:

Fitz Gerald does not disclose a "square" tubular case or unit packages containing a plurality of stick-like articles.

Worley teaches that it was known in the art to place plural batteries in a unit package. Novak teaches that it was known in the art to provide batteries in a square-tubular dispensing case. The case of Fitz Gerald is general in nature and capable of dispensing a variety of products. It would have been obvious to one of ordinary skill in the art at the time the invention was made to fabricate the case of Fitz Gerald with a square shape in order to accommodate the shape of the product contained. Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide unit packages of batteries in the container of Fitz Gerald as taught by Worley and Novak in order to present the batteries for consumer purchase.

As to claim 4, Fitz Gerald disclose bottom surface (9).

7. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitz Gerald in view of Worley and Novak as applied to claim 1 above, and further in view of Carlson et al (US 5,460,322).

Regarding claim 5, the dispensing package of Fitz Gerald-Worley-Novak meets all limitations claimed by the applicant except for a suspending piece.

Carlson et al discloses a square tubular dispensing package (Figures 7-9) with a suspending piece (40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispensing package of Fitz Gerald-Worley-Novak with a suspending piece as taught by Carlson et al for the obvious reason of hanging the dispensing package from a rod commonly used in retail store displays.

Regarding claim 14, the dispensing package of Fitz Gerald-Worley-Novak discloses a dispensing package assembled by a single sheet (Fitz Gerald, Figure 5) having a front wall (2), a rear wall (3), a right side (4), a left side (5), flaps (6) and top wall (7), and bottom wall (9); and a separate base (Fitz Gerald, Figure 6, items 10, 11, 12, 13) including a top surface (10) which is inclined (as shown, Fitz Gerald, Figure 2). The package of Fitz Gerald-Worley-Novak meets all limitations claimed by the applicant except for a tear-off portion for forming the extracting outlet.

Carlson et al discloses a square tubular dispensing package (Figures 7-9) with a tear-off portion (50) for forming the extracting outlet. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispensing package of Fitz Gerald-Worley-Novak with a tear-off portion for forming the extracting

outlet as taught by Carlson et al in order to maintain a sealed container until the presentation to the consumer. The examiner notes that tear-off portions are common and conventional in the dispensing carton art.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fitz Gerald in view of Worley and Novak as applied to claim 1 above, and further in view of Weiss (US 5,836,478).

The dispensing package of Fitz Gerald-Worley-Novak meets all limitations claimed by the applicant except for at least a front wall being transparent.

Weiss discloses a dispensing package (10) with transparent walls (Col. 2, ll. 50-53). It would have been obvious to one of ordinary skill in the art at the time the invention was made to fabricate the dispensing package of Fitz Gerald-Worley-Novak with transparent walls in order to enable the visual inspection of the contents.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fitz Gerald in view of Worley and Novak as applied to claim 1 above, and further in view of Klein, Sr. (US 3,927,809).

The dispensing package of Fitz Gerald-Worley-Novak meets all limitations claimed by the applicant except for a partition.

Klein, Sr. discloses a dispensing package (Figures 4 and 5) with a partition (C'). Klein, Sr. teaches the partition for separating used and unused components in the same container (Col. 2, ll. 25-39). It would have been obvious to one of ordinary skill in the art

at the time the invention was made to provide the dispensing package of Fitz Gerald-Worley-Novak with a partition as taught by Klein Sr. in order to distinguish between the used and unused batteries while maintaining a single container for disposal and transport.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fitz Gerald.

Fitz Gerald discloses a tubular case (2, 3, 4, 5) having sidewalls (4, 5) and a bottom (10, 11, 12, 13), the bottom having an inclined top surface (10); an opening (as shown, Figure 1); a lid (6, 7); and an inclined extracting outlet (opening formed by the bending of flaps 14 and 15). The case of Fitz Gerald is capable of functioning as claimed by the applicant and meets all limitations claimed by the applicant except:

Fitz Gerald does not disclose a "square" tubular case. It would have been obvious to one of ordinary skill in the art at the time the invention was made to fabricate the case of Fitz Gerald with a square shape in order to accommodate the shape of the product contained. Such a modification would be an obvious matter of design choice.

#### ***Allowable Subject Matter***

11. Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Response to Arguments***

13. Applicant's arguments, see Paper No. 8, pages 8-14, filed March 11, 2003, with respect to the rejection(s) of claim(s) 1, 2, and 4-7 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of newly found prior art references Fitz Gerald, Worley, and Klein, Sr., the discussion of which is presented above.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

*NP*  
Gregory Pickett  
Examiner  
March 26, 2003



Mickey Yu  
Supervisory Patent Examiner  
Group 3700